

FRANK W. DAYKIN

Interviewee: Frank W. Daykin

Interviewed: 2004

Published: 2013

Interviewer: Susan Imswiler

UNOHP Catalog #224

Description

Frank W. Daykin, born October 28, 1920 in Cleveland, Ohio, found his way to Nevada after law school and solo practice, and ultimately reshaped the way Nevada legislative law is read. An only child of a doctor and a teacher, Daykin aspired to teach classical languages. He read Latin and Greek, and was fluent in French and German. He graduated from Adelbert College (now Case Western Reserve University), majoring in mathematics and physics. He was commissioned a second lieutenant-captain in the U.S. Army Signal Corps and served in North Africa (Morocco) and Europe. After WWII he studied mathematics and physics at Princeton University but settled on law school at Case Western Reserve.

Daykin combined a solo law practice with managing the family farm. Perhaps ready for a change, he came to Nevada on the advice of a friend. While waiting to take the Nevada Bar, he was hired by the Nevada Legislative Counsel Bureau (LCB). In a twenty-year span at LCB, Daykin became a Nevada institution. Known for his scholarship and exacting standards to language and the law, he became synonymous with the difference between “shall” and “should,” and known for *Daykinisms*. As a member of the National Conference of Commissioners of Uniform State Laws, Daykin always tried to improve the language of Nevada’s statutes. He is a true citizen scholar.

The oral history interviews with Frank W. Daykin were part of the Nevada Legal Oral History Project, a joint effort of the Nevada Judicial Historical Society, the Ninth Judicial Circuit Historical Society, and the University of Nevada Oral History Program.

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An Oral History Conducted by Susan Imswiler
Edited by Patricia A. Cooper-Smith

University of Nevada Oral History Program

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Printed in the United States of America

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PREFACE

Established in 1964, the University of Nevada Oral History Program (UNOHP) explores the remembered past through rigorous oral history interviewing, creating a record for present and future researchers. The program's collection of primary source oral histories is an important body of information about significant events, people, places, and activities in twentieth and twenty-first century Nevada and the West.

The UNOHP wishes to make the information in its oral histories accessible to a broad range of patrons. To achieve this goal, its transcripts must speak with an intelligible voice. However, no type font contains symbols for physical gestures and vocal modulations which are integral parts of verbal communication. When human speech is represented in print, stripped of these signals, the result can be a morass of seemingly tangled syntax and incomplete sentences—totally verbatim transcripts sometimes verge on incoherence. Therefore, this transcript has been lightly edited.

While taking great pains not to alter meaning in any way, the editor may have removed false starts, redundancies, and the “uhs,” “ahs,” and other noises with which speech is often liberally sprinkled; compressed some passages which, in unaltered form, misrepresent the chronicler's meaning; and relocated some material to place information in its intended context. Laughter is represented with [laughter] at the end of a sentence in which it occurs, and ellipses are used to indicate that a statement has been interrupted or is incomplete...or that there is a pause for dramatic effect.

As with all of our oral histories, while we can vouch for the authenticity of the interviews in the UNOHP collection, we advise readers to keep in mind that these are remembered pasts, and we do not claim that the recollections are entirely free of error. We can state, however, that the transcripts accurately reflect the oral history recordings on which they were based. Accordingly, each transcript should be approached with the

same prudence that the intelligent reader exercises when consulting government records, newspaper accounts, diaries, and other sources of historical information. All statements made here constitute the remembrance or opinions of the individuals who were interviewed, and not the opinions of the UNOHP.

For more information on the UNOHP or any of its publications, please contact the University of Nevada Oral History Program at Mail Stop 0324, University of Nevada, Reno, NV, 89557-0324 or by calling 775/784-6932.

INTRODUCTION

Frank W. Daykin, born October 28, 1920 in Cleveland, Ohio, was a Midwesterner with the soul of a classicist. He became “the editor’s editor” and, in the process, reshaped the way Nevada statutes are read.

An only child, his father a surgeon and his mother a teacher of Latin and algebra, Mr. Daykin acquired an early desire for knowledge. He aspired to teach classical languages, the subject he called his “great love.” Studying Latin and Greek, and fluent in French and German, Mr. Daykin chose pragmatism over love, majoring in mathematics and physics at Adelbert College (now Case Western Reserve University).

A post-Pearl Harbor college government-sponsored physics project took Mr. Daykin into the U.S. Army Signal Corps. He was commissioned a second lieutenant-captain, and served in North Africa (Morocco) and Europe. After World War II, Mr. Daykin studied mathematics and physics at Princeton. At his aging father’s request for help with the family farm, he returned home.

Settling on the law as a career, Mr. Daykin attended law school at Case Western Reserve. He established a solo law practice and managed the family farm, which led to an office on the farm, and a position as member and chairman of the Lake County (Ohio) Planning Commission.

How a self-described loner and Ohio farmer came to Nevada is a testament to the lure and mythology of western opportunity. On the word of a local urban planner that Nevada “was a good place,” Mr. Daykin organized his affairs and headed west. While waiting to take the Nevada Bar, he was hired by the Nevada Legislative Counsel Bureau (LCB) and, as they say, the rest is history.

In the span of twenty years, Mr. Daykin became an institutional oracle to the Nevada Legislature. His maxim was that “a law, a statute, should either command or prohibit or declare the law. It has no other legitimate office.” Mr. Daykin became synonymous with the difference between “shall” and “should.” “Shall,” he explained, “is a command. ‘Is’

declares the law.” Like Xerox or Kleenex or Google, Mr. Daykin was the namesake and embodiment of an entire category, the *Daykinism*—a “kind of language which is correct English, rather than common speech, and something which occurs often enough in different bills that it is recognized.” Throughout his LCB career, Mr. Daykin continued to “reconcile the substance of the statutes,” and “correct the language and style.”

Mr. Daykin talks of his time as a member of the National Conference of Commissioners of Uniform State Laws, which dovetailed with his interests in producing good language and style in drafting laws that could be adopted in all fifty states. He speaks of his scholarly values and philosophy. He acknowledges the changes in the legislature and legislators as Nevada grew from “one senator and one assemblyman from every county,” into a more populous and urban state. His practical leanings are apparent when he admits that while bringing the LCB into the computer age, he kept “the old Mag Card typewriters on standby.”

In his own words, one of his major contributions was to “attempt rationality in the reapportionment,” and in continually trying to improve the language of the statutes. Frank W. Daykin is a true citizen scholar.

For readers who are interested in examining the unaltered records, copies of the recorded interviews are available in the Special Collections department of the UNR Library.

Susan Imswiler conducted oral history interviews with Frank W. Daykin in September 2004, at his home in Reno, Nevada, as part of the Nevada Legal Oral History Project, a joint effort of the Ninth Judicial Circuit Historical Society (NJCHS), the Nevada Judicial Historical Society (NJHS), and the UNOHP. Begun in 2001, the project was intended to record the life stories of leading members of

Nevada’s legal profession and to educate the public about law and the courts by making those stories widely available through various media.

Members of the boards of NJHS and NJCHS compiled and vetted lists of potential narrators, ultimately selecting representatives from both the state and federal benches and bars. The UNOHP, under the direction of Tom King and his successor Mary Larson, recommended interviewers, most of whom were professional oral historians, and donated equipment and transcription services. Brad Williams, of NJCHS, coordinated the project from its inception. Susan Southwick, of NJHS, oversaw that group’s participation. Patricia Cooper-Smith completed the copyediting and introductions. Alicia Barber, Director of the UNOHP since 2009, supervised the project’s final publication and dissemination. The project was made possible by a generous challenge grant from the John Ben Snow Memorial Trust, with matching funds provided by the U.S. District Court for Nevada Attorney Admissions Fund, the Washoe County Courthouse Preservation Fund, and the Nevada State Bar. Thanks go to Susan Southwick and the Board of Trustees of NJHS, and to Susan Imswiler, who interviewed Mr. Daykin.

Patricia A. Cooper-Smith
Carson City, Nevada
May 2013



FRANK W. DAYKIN
CIRCA 2011

(Courtesy of Cooks Photography)

EARLY YEARS AND COLLEGE

Susan Imswiler: This is September 26, 2004. My name is Susan Imswiler. I'm here in Reno at the home of Frank Daykin, with whom we are beginning a series of interviews. Thank you very much for taking part in this project.

Frank Daykin: You're welcome.

Today we're going to cover a little bit of your family background and your childhood. Could you tell us where you were born—the city, the county, the state?

I was born in East Cleveland, Cuyahoga County, Ohio, on October 28, 1920.

And you do have a middle name. What does the W stand for?

The W stands for Washington. Thereby hangs a tale. My father was born on George Washington's birthday. I was named for him.

Did you know any of your grandparents, personally?

Only my grandmother on my mother's side, and I can't really say that I *knew* her, because she died when I was, perhaps, five or six years old. I only have a memory of an old lady sitting in a chair.

Did you remember any of the names of your grandparents?

Yes. My paternal grandfather was John Daykin. My paternal grandmother was Ann Daykin. My maternal grandfather was Thomas Kelly. My maternal grandmother's name I do not recall.

You said you were named after your father, Frank Washington Daykin—how did he come to locate in Ohio?

His grandfather came there from England, part of a group of four families. They sold up everything they had in England. They made the passage. They bought little farms, that is, land they could *clear* for little farms, in what was then the Western Reserve

of Connecticut, Sharon Township, Ohio. This was in 1833.

And your father was a doctor?

Yes, he was a Doctor of Medicine.

Was he, at the time, a country physician, or did he practice in a town setting?

He practiced in the City of Cleveland, but he was a general practitioner *all* his life. However, his greatest, what shall I say—skill, perhaps—lay in the field of internal medicine, curing by the use of drugs and medications without surgery. He was an expert surgeon, but he declined to *do* it. The Cleveland Clinic, of which you may have heard, used to refer their inoperable cases to him. They would ask him to call in at the clinic when they had one.

Did his practice have any kind of an impact on your family life? Was he frequently called out at night, for example?

The answer to that one is no, for at the time he married my mother, which was 1919, the year before I was born, he moved away from his office out to East Cleveland and thereafter would take no *night* calls. There was a little sign on the office door, “If the bell does not answer, call Dr. Sunkel or Dr. Battles.” And the numbers were given.

That was a great idea.

That was that!

Was there ever a time that you thought you might want to follow your father’s footsteps and practice medicine?

No, I never really contemplated that. For one thing, I did not think, and still do not think, that I had the intellect to do what he did, and I didn’t want to be second-class.

Was your dad involved in any political activities or any community activities that you remember?

Politically, he was a friend of Senator Mark Hannah’s, and he took part in the campaign of 1900, when William McKinley ran for president, Theodore Roosevelt for vice president. He carried Roosevelt’s coat, as the expression had it, in northeastern Ohio, meaning, he stood there and could whisper to the candidate, “That’s Commissioner So-and-So from Summit County coming up.” And the candidate could be delightfully cordial.

Did any of your father’s stories stir up any interest in you in politics?

No. He didn’t, of course, ever pursue politics, and I had no calling toward it.

What was your mother’s full name, and where was she born?

Her name was Maria Kelly Daykin. She was born in Cleveland in 1879.

And she was a teacher?

She was a schoolteacher, yes. She taught Latin and algebra at East High School in Cleveland.

Now, in many cases in the West during the 1800s a teacher had to give up the classroom once she married. Did your mother have to make the same choice?

She did not *have* to, but she *did*, of course.

Did you have any brothers or sisters?

No, I was an only child. One look at me, and that was that! Actually, of course, my mother was forty-one when I was born; my father was sixty-one.

Do you have an earliest memory?

Yes. [laughter] It is of being pulled along on a little hand sled by my father on a street that I could walk to and identify still in East Cleveland, and that dates, as best they could identify it, from about two years old. We could date it, because I remembered the spot. I remembered there were no houses along the street, and they were built soon after.

Now, you were home schooled for your elementary school years.

Yes.

By your mother?

Yes.

What kind of an experience was that for you?

As far as I was concerned, a very pleasant experience. She bought a series of lessons from the Calvert School in Baltimore and taught them to me.

Now, were you living, more or less, outside of town during this time? Or you were actually living in town?

East Cleveland is a suburb of Cleveland. However, it was a city of about 40,000 people

then. It was about six miles east of Public Square. So, I would say it was an urban, rather than a rural, environment.

Now, you would have been around nine when the stock market crashed. Were you aware of anything happening at the time?

Yes, I was. However, the stock market crash did not have any particular adverse effect upon us. My father was a shrewd investor. He held a lot of bank stocks; he held a lot of bonds—when I say “a lot” we were not extraordinarily wealthy, but in proportion—and some other small common stocks. What *did* have an impact was four years later, roughly, Franklin Roosevelt’s devaluation of the dollar. My father turned on a dime. Except for war bonds during the Second World War, he never afterward bought a bond.

He was interested in a number of the banks. He’d been, for example, chairman of the finance committee of Pearl Street Bank, which merged into the Cleveland Trust Company. So he had large holdings in that. He also had substantial holdings in the Union Trust Company, at that time, and the Guardian Trust. Of the three largest banks in Cleveland, all were closed during the Bank Holiday, and only one was permitted to reopen. That was the Cleveland Trust. The Union Trust was liquidated, and a new bank started from its remaining capital. The Guardian Trust Company paid out eighty-six cents on the dollar in liquidation. The Cleveland Trust Company, fortunately for the city, reopened. One of the directors of the Cleveland Trust was Newton D. Baker, who had been Woodrow Wilson’s Secretary of War. The president of the Union Trust was Joseph R. Nutt, who had been the treasurer

of Herbert Hoover's campaign in 1932. Need I say more?

Now, did you notice changes around you? You said your family was reasonably well insulated from some of it.

Yes.

Were you aware of other things occurring?

No. Things occurred, of course. Money was tight, generally, in Cleveland, less from 1929 on than from the 1933 events. It was a big change in *our* way of life. In those easier days when people would work, my mother had employed a maid. Never after. Well, I remember digging weeds out of a neighbor's lawn for ten cents a peck—clay soil. [laughter] That sort of thing I remember.

I assume your father's practice declined somewhat during the Depression.

His practice did not decline in volume. It declined in what people....

The ability to pay? [laughter]

Yes. Father never sent a bill. He kept his accounts in his daybook. He told his patients it was cash or charity. A lot of them, however, you pay a dollar a week, or the like.

Backing up just a bit, I hadn't been aware that your father had been born in 1859. Did he have any memories of the Civil War or Reconstruction that he passed on to you?

His only memory of the Civil War—remember, he was a child—was of soldiers drilling before they were sent to war. Of

course, the Reconstruction occurred in the South, and Cleveland was in the North. He never expressed any memories of the Reconstruction Era.

OK. I just was terribly curious about that. [laughter] Now, you mentioned your first job was digging weeds at ten cents a peck.

[laughter] Yes.

Did you have other jobs as a young boy, after that one?

Not particularly. My father didn't encourage me to work outside. Of course, I took care of the yard, and we had a farm at Perry, Ohio, about thirty miles out, where we went every Sunday, and I would help my father with whatever he chose to do.

What kinds of chores did you have on the farm?

We rented the farm to a succession of tenants, who were progressively worse and worse, as I remember during my childhood. Father did not, of course, perform any of the day-to-day farm work. I can remember helping him and the tenant drive cattle sometimes from one field to another, or drive cattle down into the big woods. I can remember when Father would go down there to salt them, when I was a very small child looking at them, and for safekeeping he would put me up in the center of a hollow stump, of which there were plenty handy wherever he chose to salt. [laughter]

Now, I assume that you were probably a big reader as a child, weren't you?

Yes.

Now, you were home schooled through, what, about sixth grade?

Yes. The Calvert course went through the first eight grades, but my mother enrolled me in the seventh grade, the beginning of junior high school, and a very good thing she did, because it took me a couple of years, really, to get used to public schooling. I got reasonably good grades during the seventh and eighth grades, but it was the ninth grade and after that....

That really took off?

Yes.

Did you have a favorite sport or a favorite game as a child?

As a child, I was totally non-athletic in that sense. Father believed in walking—he would come home from the office, and we would walk every afternoon—and swimming—he taught me to swim and so forth, that sort of thing, but playing sports, “Nonsense!” He never had. I never did.

Did you have any hobbies or any collections that you'd like to talk about?

I had a stamp collection as a boy, which I failed to keep up. Of course, I have the stamps, but....

What can you tell me about some of your childhood friends?

My best friend, probably, was a boy named J.V. Duff. He and I went through junior high school, high school, college together. We *walked* to every one of them, including

college, living at home. We walked a mile and a half one way to go to Shaw High School. When we started college, we turned around, and we walked a mile and a half the other way to get to Western Reserve. [laughter]

That's great, though. Sure saves on cars.

It sure did. Incidentally, my father *never* owned an automobile. He got around his practice—and he made a lot of house calls—on the streetcars and buses that Cleveland had *and* walking, of course. He had me learn to drive as soon as I was sixteen, and I got a driver's license, in case we ever had to use a car, *but* we never had one. As far as his driving, he said, “Well, I use my hands in diagnosis, and driving an automobile coarsens the hands.”

I thought to myself when I was a boy, “Well, *that's* a handy excuse for not wanting to have a car.”

Many years later I heard where an inquiring reporter had asked Major-General Curtis LeMay, the chief of staff of the air force, whether American boys made especially good pilots, because they were always fussing with automobiles. Replied the general, “Oh, no! A pilot should *never* drive a car. It coarsens the hands.” [laughter]

In that case, I have to ask, I'll bet you have vivid memories of your first car?

Yes, I have. Actually, that was an oddball situation. When we were both seniors in college, my friend Duff lined up a car that he wanted to buy. It was a used Ford, oh, not too many years old, in good condition. The agreed price was ninety dollars, but Duff didn't have ninety dollars right at that moment. So he said if I would buy the car and pay for it, I

could drive it until he got the ninety dollars together. [laughter] So that was my first car.

How long did it remain your car?

Oh, a matter of a few months. Both Duff and I did tutoring, partly to pay for our college work, and I drove it to some of my tutoring. Of course I let J.V. drive it to some of his and so on. [laughter]

Now, did your family travel at all or take family vacations?

No. As to the second, the answer was no. I never knew my father in all his lifetime to take what would be called a vacation. But beginning when I was seventeen, he and I started going out farther west into the Middle West looking for good farmland. Meeting the double liability, you know, of those banks was a very serious matter, but we got a little money together looking to buy land. So we knocked around the summers of 1938, 1939, 1940, 1941, together in the Midwest.

Do you remember any specifics of where you looked?

Oh, yes. First summer we went down to Texas. Father thought there was good land in Texas, and he had letters of introduction from bankers he knew in Cleveland to a fellow who was on the board of the Southern Pacific.

That fellow said, "Well, about how much land do you want?"

"Oh, two, three thousand acres," as land was going in Texas at that time.

"Well, you know, I've got a small ranch I'd like to sell you, but it's about *twenty* thousand." [laughter]

We knocked around a little and didn't get anything. Then we looked primarily in Iowa and Nebraska.

Now, still kind of covering your childhood in sort of a circular motion, you went to Kirk Junior High School, and then Shaw High School, both in East Cleveland. Do you remember, were you either a leader or a follower at school?

I did various things in junior high. I worked on the school paper a little bit. In high school we had various after school clubs, and both J.V. and I belonged to different ones of those.

What clubs did you belong to?

There was a Latin Club, and that's the one that I remember by name. We also, in our senior year in high school, published an anthology of writings of the pupils in celebration of the one hundredth year of a school on that site. It hadn't been a public school when it was founded. I worked on that. J.V. and I and, I think, Phyllis Steinfurth were the editors of it.

What were your favorite classes?

Favorite classes? Oh, gosh, I liked all of them. I enjoyed geometry, especially. I also worked on the school paper. I was the collection manager for that. The reason for the association of ideas was, Mr. Gifford, my geometry teacher was in charge of the financial aspects of the school paper. [laughter]

What was it like being the collections manager?

That meant going out and collecting for the advertising that was sold. I never

remember not being able to collect, even though this was just coming out of the Depression.

Were there any teachers who really made an impact on you?

Mr. Gifford, very strongly. I guess he was the most influential in my junior high or high school.

You mentioned you were coming out of the Depression. Were you at all aware, even peripherally, of European affairs at that point, while you were in high school?

Yes. That last year was 1938. Christopher Morley's *History of an Autumn* pretty well sums that one up.

Did your family talk much about European affairs at home?

Oh, yes. After the Second World War had broken out in Europe, I remember one little classic of my father's. He picked up the morning paper, which he was in the habit of reading at breakfast, and he read out the headline, "Hitler Invades the Balkans." For the first time I felt sorry for that man.

Now, a lot of his patients were immigrants. Cleveland was a large, industrial city with many Balkan immigrants. My father, incidentally, footnote, spoke German excellently, and he spoke Bohemian perfectly. He had learned that early in his practice. He had a patient who was a shoemaker, and, of course, they spoke together in German, and the shoemaker asked the doctor, would he teach him English. Father said, "Yes, if you will teach me Bohemian at the same time."

So that he could better communicate with his patients?

Yes.

Wow! Your whole family must have an amazing flair for languages.

He therefore knew those people intimately.

Was the buildup in Germany anything you talked about in high school, too?

Oh, yes. Duff, particularly, carefully compared, all the way from 1933 on, the careers of Franklin Roosevelt and Adolf Hitler.

Oh, while this was occurring?

There's a perfect parallel.

What kind of an atmosphere do you remember in school? Did people fear that this was heading our way? What do you remember about that?

No, I don't think so. Well, certainly not in high school or before the war. During the war, when I was in college, no, there wasn't any particular thought that it was coming our way. Pearl Harbor astonished most people.

Yes, I'm sure it did.

Including us.

You graduated from high school in 1938 and immediately went on to college, walking a mile and a half the other direction.

Yes. Duff and I each had a half scholarship, that is, *half* our tuition was paid.

How did you get your scholarship?

Just applied for it—and our grades.

Now, at that point, when you started college, did you have any inkling of what you wanted to do with your life?

Yes, I thought I wanted to teach. My father never thought much of that, that is, he was never in favor of it.

Did he say why?

He didn't think that teaching was a very profitable occupation, and one should do something.... But he never *urged* me to study or to practice medicine. I wanted to teach classical languages. I learned Latin in high school. They didn't teach Greek in high school by then. They had when my mother was teaching in high school, but they didn't then. So I studied Greek at home, taught myself the basics of it, and then took advanced courses when I was in college. But that was my great love. However, I also majored in mathematics and physics.

When you mentioned that you majored in mathematics and physics, one of the things I am aware of just from general history is that there was a lot of uncertainty during that period of time. Rutherford had split the atom. People had realized that the atom was not as solid or as predictable as they had originally thought. Were you aware of this? Sometimes that period is referred to as the Age of Anxiety.

We didn't consider it any matter of *anxiety*. We knew there was no anxiety about it, as far as teachers of physics were concerned. We just studied what we knew. My last year of college in physics, when Pearl

Harbor had just occurred, I was working throughout the year—Pearl Harbor fell kind of in the middle of it—on advanced projects that the government wanted certain physics departments to look into. One of the professors and another fellow by the name of Gene Haake and I were carrying out some of that work.

Can you go into any detail about the work you were doing, or is that classified information?

I don't know whether they ever declassified it or not. An electric arc, which is what is used in spectroscopy, requires the flow of electric current from one terminal to the other. The farther apart you can separate those terminals—in layman's terms—the better look you have at what is streaming down across it. Our task was to try to develop a type of electrical circuit that would permit a longer arc. Actually, we were reasonably successful. I never knew what became of the work afterwards.

Did you have to have any special clearance to work on those projects?

No, because we didn't know enough of what was going to go on out of it. We simply didn't. However, that assignment did mean that when I graduated I was able to get a commission in the Signal Corps.

I do want to back up a little bit before we go on to that, in fact, before we even get to Pearl Harbor. Were there any other extracurricular activities that you participated in during college?

Yes. I was a member of the Phi Society. I was never a member of a fraternity in college, and I was the first independent, non-fraternity

member who had ever been elected president of the Phi Society. [laughter]

There must be a story there.

Simply, that a number of us *didn't* belong to the fraternities, which tended to be social. We didn't belong to them, and we decided among ourselves that if we got together behind one person, by golly, we might be able to elect him, and the other fellows wanted me to, and I was it. [laughter]

Pretty good political instincts.

OK. That was about the *only* extracurricular there. You see, we were tutoring a little on the side. Inside I was supposed to—and did—tutor the football team. And until my son, now in high school, took up football, I had *no* use for football ever thereafter. [laughter]

I am not even going to touch that one.

No. Of course, we tutored on our own account, also, to help make up that other three hundred dollars.

With all that going on, did you have time for girls, at all? Did you date during college?

Yes, a little.

Now, on to the big one. Where were you when you heard about Pearl Harbor?

Father and I were down at the farm. Remember, Father didn't drive. We had been driven by a man he knew out there. We came up at the end of the day, got into the car to go home, and the man who owned the car turned on the radio, and that is when we heard about Pearl Harbor.

Can you tell me what you felt? For example, when I heard about 9-11 on the radio, I just had chills. Do you remember anything like that?

We were *surprised*, of course, but didn't have chills or anything like that. Well, this was *it*. My thought was, naturally, well, this was war, and, certainly, we were going. My father never even *suggested* that I ought to do anything to be deferred or anything like that, but he said, "Make sure you are in some kind of *active* service." His memory of warfare, of course, by word of mouth, was the First World War, where most of the casualties were disease and so forth in the trenches. "Stay out of the trenches!"

That would have been excellent advice.

When I told him that the Signal Corps had the highest rate of casualties of any line outfit—and it *did*—that didn't faze him in the least! You're up, out of the mud, moving around.

Did the war cast a pall over the rest of your college years—or the rest of that year?

No, it didn't. We simply, as I have told you, began that military project; we finished it. That was that.

MILITARY SERVICE, LAW SCHOOL AND CIVIC LIFE

There was a feeling of enthusiasm?

Yes. I applied to several services. I tried for the Marine Corps and was turned down as not physically qualified. I was underweight. I had glasses then, and so forth. I had other lines out. I applied for the Signal Corps commission, and was sent down to Fort Hays to the physical examination. Father went with me. The doctor went down, and everything that didn't pass, that is, where I wasn't up to standard, he wrote, "Waived," after it, and recommended me as physically fit. [laughter]

What did you do in the Signal Corps?

The theory on which I was commissioned was that I understood electronics, because of the work in the physics laboratory. However, I was sent to Fort Monmouth, New Jersey, company officers' training course, supposed to be a ninety-day course. I had been there for just about one month. One of the lecturers was telling the student body that they were going to have to take this seriously, or some

people were going to ship out. An enlisted man walked out from the wings and handed him a note. He opened the note, "Lieutenant Daykin, Lieutenant McElmoyle, report to the commandant!" And there was just a *gale* of laughter. You know, the student body—we didn't know each other much.

"Well, *those* guys are going to get thrown out!"

We were sent to Camp Pickett, Virginia, and that was where General Patton was putting together the Western Task Force for the invasion of Morocco. You see, they knew, from the application and so forth, that I was fluent in French. I also had the electronic knowledge. They were organizing two radio-broadcast operating detachments to take over the civilian facilities after we landed and occupied Morocco. We landed, and after three days the French ceased resistance, and they jolly well operated their *own* facilities quite happily.

From there on, I did a great variety of assignments within the Signal Corps. I've often thought that one reason that I seemed to

do all the odd jobs is because that was literally what I was given—if there was something *odd*. Successful though I was, I wasn't burdened with any body of military doctrine. I think I was the least trained officer who ever served in the Second World War. [laughter] No ROTC, no nothing.

What were some of your odd jobs?

The first one, we went around and surveyed the radio equipment of the various French forces and did a little other reconnaissance while we were at it. We took photographs, for example, of the fact that a Jeep could just cross the road bridges in northern Morocco on the south side of the Riff Mountains. They were built primarily to carry a narrow-gauge railway. They were built just wide enough that they would carry a passenger car. We brought back a photograph of a Jeep in the middle of one of those bridges. That allayed any anxiety on the part of the base commander that the Germans were going to send tanks down through Spain and Spanish Morocco. Tank come up to that bridge, you know. [laughter]

We got clear around behind the Atlas and down as far as Agadir and looked down at a Spanish enclave at Ifni to see if there was any particular fortification going on, duly reported that.

So a lot of what you did, really, was reconnaissance?

That aspect of it. There was a captain—and I was a second lieutenant—and a couple of enlisted men. I could talk to the French. We had a French officer along, also, to tell the French they were supposed to *answer*, but I didn't have to work through an interpreter. I could ask and be answered.

Did you ever find yourself in a combat situation?

The mission never involved hand-to-hand combat. Of course, an amphibious landing is a combat situation, and I made the one at Fedala, north of Casablanca, under General Patton. I made the one on the Riviera under General Patch with the Seventh Army. So, yes, I have been in combat situations.

What kind of technology did you have to work with at the time?

My assignments were actually less technological. I was grabbed off, when the broadcast station detachment was being dissolved, by Colonel Thornton and put into the supply section of the base headquarters. Rather than direct technology, it was shipping out to support the Allied invasion of Sicily, re-arming the French forces, there again, taking their signal equipment and what was necessary in working with the French officers.

So you spent pretty much the entire war in the southern theater, then?

First Africa and then Europe.

Where were you when you heard that the war was finally over?

I was right about where it finally ended. Seventh Army was around in southwest Germany. We had just captured Marshal Goering, and then in a day or so the war was over. I think I heard the first shot fired by American forces, and I heard the last, metaphorically.

Did you have occasion to see any of the prison camps?

Yes. And I think about it as little as possible. I had to go into Dachau very briefly to look for a man whom intelligence wanted. I spoke fluent French, fluent German. “Daykin, go look!” [laughter] And I didn’t find him. But I have memories I’d rather not bring up. [crying]

How long did you remain in the army after the war ended?

I served in the Occupation until about September of 1945, so that would be about four or five months. Then, because I had served in Africa, I wasn’t to be sent to the Pacific, so I was sent home. Neither officers nor men who had served in one malarial area—and North Africa *was*—were to be sent to the other, which was the Pacific.

I was rotated home. I got home in about November of 1945. See, I had left in October. So that was just over three years continuously overseas. Then I had a lot of accrued leave, because you didn’t take *any* leave during that three years, so I was technically on active duty until about the following February, but home on leave. Then I went into the reserve.

Now, you were away from your family, your friends, for three entire years—probably minimal communication, an occasional letter?

Yes.

That’s so different from today.

Yes. The Vietnam veterans had a lot of stuff that was rougher than we did, but they would serve for a matter of months.

How different was it for you to come home after not seeing people for three years?

I guess I kind of picked up.

Had you been able to keep in fairly close correspondence with your family?

We could exchange those letters that were called, I think, V-mail. You had a sheet about so long and so wide on which you could write.

About four by six?

Yes. Then it was folded over and mailed.

You tried to cram as many words as possible on there?

Yes. That was the contact.

Tell me about the day you came home and saw your family again.

I went through Indian Town Gap. I was processed out there and put on leave. I walked over to the Pennsylvania Railroad Station, took the train to Cleveland, then took the streetcar route home. Of course, I’d been able to let them *know* by mail that I was coming. They were glad to see me.

You were technically on active duty till about February, and then you joined the reserves. What did joining the reserves entail? Did you have to do anything beyond that?

In the reserve duty at that time, you were called up for about two weeks each year. I did *not* have to be called up while I was in law school, I know, because that was a two-calendar-year, continuous course. But later on, after I was out farming, we had about two weeks of active duty training, and we were supposed to take what you might call extension courses—study and send them in

and so forth. The reason I left the reserve—I had been rather faithful in doing that—but one year they announced that absolutely *no* one of the officers would be retained unless he completed the course—and I did. Then they announced at the end of the year, “Oh, well, because of hardship, we’re going to defer for a year.” And I handed in my resignation. I was so totally disgusted. So I did not serve in the Korean War.

That worked out well for you. Now, you went to Princeton the fall after you returned home, right?

I went to Princeton that fall, actually.

Oh, you got home in November and immediately went to Princeton?

Yes. The professor who had supervised the project that I worked on was teaching in the graduate school at Princeton. I wanted to travel a little there, and I dropped in on him, and we talked. He said, “Well, come on.” They were pretty darn *informal* about it then with that uniform on.

So, you found yourself a graduate student in Princeton in mathematics?

Yes, mathematics and physics.

You were also a teaching assistant?

Yes, in mathematics, partly paying for the tuition.

How did you like teaching?

I enjoyed it. I’d made up my mind during the war that there wasn’t going to be enough call for teaching in classical languages, so I

had better follow the other prong of what I had studied. I would cheerfully have gone on there and tried to get a college position. Probably could have got one there, from all that I know of. But anyway, my father pointed out that I had better come home, because at that point he was eighty-seven. Eighty-six in 1945. After I had completed that one partial year, he thought I had better come home and help look after things there at home. I couldn’t pursue any graduate study in mathematics or physics. I had already as an undergraduate taken all the graduate courses that there were at Western Reserve.

And they didn’t confer a graduate degree, having taken all that?

Oh, no, because I had taken them for undergraduate credit. See, they didn’t have an extended department there. I decided to take up law instead. So I am an accidental lawyer.

Are there any professors or courses that stand out during the time you were in law school?

Yes. We had an excellent faculty. They were all older men, you see, who had come out and were teaching. But we had some cracker jacks. Dean Finrock, who was the dean of the law school, was an old man, but he taught equity. Fletcher Andrews taught agency. Clinton Dewitt taught evidence. He also taught suretyship.

This is where your article came from?

Yes. See, I was put on what was called the case notes board, which they didn’t have really a law review at the time—one was set up afterward—and our papers were published in the *Ohio Law Abstract*, which contained cases and articles and so forth from the profession.

Your first publication was in 1949?

“Guarantor Distinguished from Surety.” Yes. See, we went to law school as a continuous course. It was a three-year course in two calendar years. There were no vacations. We took term, term, term. During the last term we were allowed to take the Ohio State Bar examination, even though we had not completed the course, but they held our grades to see whether we would be graduated. Then, if we had passed the bar and been graduated, as virtually all of us were, the chief justice came up from Columbus to swear us in.

What was the purpose behind compressing three years into a two-year course?

Ours was an unusual class. We had three young women in it, but otherwise, everybody was either an officer or an enlisted man from the armed forces. Some were still in the reserve; some weren’t. But we were all pretty much—or we’d better be by that time—matured. They compressed it to give us a good start.

Now, you weren’t trying to work while all this was happening, were you?

No, I was not. However, some of the fellows did. I remember one lad, a friend of mine, who fell asleep in class. [laughter] That was all right, except that he had lain back, and he fell over backwards and slid under the table. He *hoped* that the professor hadn’t noticed. So very discreetly the chair came up, and then Lantz came up and sat in it. The professor paused in his lecture, “Welcome back, Mr. Lantz!” and continued. [laughter] Yes, some of them did, and they had a harder row to hoe than I did.

They sure did. Did you, at that point, have a specialty in mind, a direction you thought you’d be going in law?

No, I did not. Rather the opposite. I don’t know that I thought of it too much while I was in law school, but definitely when I got out of it. My model as a lawyer was what my father had done as a doctor, that is, general practice. Serve people, don’t get buried in some kind of a specialty.

That is an interesting idea. How well would you say law school prepared you for actual practice?

As well as I expected, for I didn’t have any training in the nuts and bolts of it. I expected to open my own office and kind of learn as I went along—which I did.

That’s what happened, OK. Someone who’s majoring in teaching does a semester or so of student teaching—they don’t have anything like that in law school, do they?

No. And even less, I think, then than perhaps now—though I haven’t visited the law schools recently.

So, your background was more than theoretical?

Yes. They taught you the law. And, of course, Western Reserve did not concentrate upon Ohio law, as the night school downtown did, but we passed the Ohio bar exam.

Did they specifically prepare you for the bar exam, or did you have to study in addition for that?

No. As I think I mentioned, our class was allowed to take the bar examination at what was in fact the end of our fifth semester of

the law course. No, we didn't study especially for the bar. [laughter] Who had time for that while studying law?

But you were successful.

Yes.

And you opened your own private practice.

Yes.

You mentioned you had to pretty much learn the nuts and bolts of opening a practice on your own. Tell me a little bit about that process.

I rented. Rather than going into a firm, because I wanted to be alone, I rented a very small office downtown. I didn't hire a secretary; I didn't have the income from the practice to do so, and incidentally, I never have—hired a secretary, that is.

You've always done your own office work, too?

Yes.

Wow.

And went along. I took what cases came in. Of course, there is one thing about having very few cases when you are starting—you can spend a lot of time on each *one* and thus teach yourself what has to be gone through and done.

Do you remember your first case?

No. [laughter] Well, I remember my *only* criminal case, to which I was assigned by the common pleas judge.

Oh, tell me about that.

It was a soldier whose unit was on duty there in the Cleveland area. He had purportedly married a local girl, and then she was suing him for non-support of their expected child. I went and interviewed him in the jail. I discovered that he had been married in Georgia, not in fact divorced, because he had failed to pay the lawyer who was getting the divorce in Georgia. He could not be guilty of non-support, but he *was*, in fact, guilty of bigamy.

What a mess.

I told him, "Look, I think I can work a way out of this. You *will* agree to an allotment from your pay for the support of the child up here. We will plead guilty to the charge of non-support, but I will not conceal from the district judge—the common pleas judge—the facts." And I didn't!

The prosecuting attorney was perfectly willing to take that settlement. It provided for the child. [laughter] The district judge said, "Fine." And, of course, here I was, a reserve captain in the army. I had no difficulty going down to the local army office and getting this allotment set up. So that was the end of that.

I never liked criminal law. I never voluntarily took a criminal case. [laughter] That's the funniest, and that's because the early civil cases—I do not remember which was first—were less distinctive than that one.

I would guess so. Was there such a thing as a typical day when you first began your work?

No. There really wasn't. Of course, work was very slow coming in, even though, as I say, I devoted exhaustive time to working out each one. I spent some of the time reading biographies of, not particularly, lawyers, but

men who had been successful. That was about it.

What professional affiliations did you have at that time?

I would have to say none. I'm sure there was a bar association in Cleveland, but I had not hunted it up or joined it, and I never was a member of any legal or other fraternity.

You did at one point become a county commissioner for the area—a county planning commissioner?

County planning commission, yes. That, however, was not in Cleveland.

Oh, I'm sorry.

I maintained an office in Cleveland for a couple of years after I was graduated from law school, and then I moved out about thirty miles to Lake County, where we had the farm, because it was either going to go to pot, and I would have to sell it—which my father had urged me not to do—or I was going to have to take hold of it and dig it out, which I did.

So, at the same time, you were trying to establish a law practice...?

I was farming. Actually, practice developed probably about as well down there, because, of course, I was known in the community. I had known people as I was a boy growing up. The farm was well known. The name was well known. People would come down there if they wanted to see me and would come to the house. My office was in my home there. They would be told, "Well, he's down in such and such a field." And being farmers they'd

go down and wait for me at the end of the field. [laughter] I'd finish the round and talk to them.

I have to ask, what were you farming?

Oh, all right. It was a dairy farm, that is, dairy cattle, but, of course, we raised all the feed. The farm had been very badly grown up to brush. I was operating and then trying to clear a field at a time.

Were you doing all your own milking at the time?

Yes, with a surge-milking machine, of course. That wasn't milking by *hand*.

Right. So you had quite a tight schedule there to work with.

Yes, I did. [laughter] Dairy cattle have to be milked twelve hours apart and *at* the time.

Right, that's sort of an unforgiving business.

Yes. I did very little, of course, litigation. Whatever I had to do in court—probate matters and things like that—I had a more flexible schedule. I would pick a rainy day, dress, go into the county seat, and tend to that.

Now, I assume you had your own car by now?

Yes.

You were not taking the bus as your father had?

No, I was not.

During the time you were in Ohio, did you marry and raise a family?

I did marry. I did not have any children at that time.

What brought you to Nevada in 1963?

I had met Jack Pike, [Miles Nelson Pike] who was a former justice of the supreme court out here, and he persuaded me that Nevada was a very good place to practice law. So I just came out, and that was it. I just came out here.

Now, I think we should probably go back. You referred to the planning commission and the like. I drew the first zoning resolution for Perry Township, the township in which I lived, and then that was adopted. In 1957 the county commissioners re-established a planning commission that I guess they had had in the 1920s, and I was one of the first eight commissioners appointed. They had one commissioner from each township, plus the county commissioners as *ex officio* members.

Now, what kind of issues were involved? Was there urbanization occurring, or what was happening?

Urbanization was beginning. Yes, you're following me very nicely. Zoning, subdivision of land, planning for urbanization. We worked somewhat by subcommittees. I was chairman of the committee on land use and zoning. I retained that even when I was, after about three years, asked to be chairman of the full commission. The first chairman knew a great deal more about planning than I did, but he was very tolerant and very slow in getting meetings underway. The commissioners couldn't quite stand it, so Ed said he would like to resign from that, and they asked me if I would take it. I did. And I got the show on the road. I would wait. A meeting was scheduled for a certain time. We would meet as soon as there was a quorum, whether or

not everybody had come. We have a quorum, the meeting will come to order. Well, pretty soon, we had a quorum at the appointed time. [laughter] Everyone knew who walked into the meeting late.

And that would be on the record, probably.

Not particularly, but, you know, we all knew each other.

Right. Now, you mentioned the former commissioner knew a lot about planning.

He was an architect, and he was interested in planning. He gave us a book to read when the commission was reconstituted, *The Crack in the Picture Window*, about the various failures of subdivision and the hardships of it. It had been written in the East.

The reason that leads into my coming to Nevada is that I realized that suburban development was inescapable. I would not indefinitely be able to continue to operate a farm. Therefore, when Jack told me that Nevada was a good place, I kind of organized things and came out here. I retained the land, but got a neighbor to farm it. Of course, by that time it was in much better shape, and it could be tilled.

NEVADA AND LEGISLATIVE COUNSEL BUREAU

So, when you came to Nevada, this was the first time, and you didn't really have any job leads, did you?

No, I didn't. I just came out. I arrived in October. The bar would not be given again till September of the following year, and in any case, in those days, one had to be a resident for six months before he could take it. I asked what I could do while I was not a member of the bar. Jack Pike, as a supreme court justice, had worked on the statute revision commission, and he said, "Oh, I think Russ McDonald," who was the director of that and had remained as the legislative counsel, "can always use lawyers. You don't have to be admitted." So he introduced me down there, and Russ hired me at the legislative counsel bureau (LCB).

Now, what kind of a learning curve was there in that type of work?

[laughter] The first work we were set to doing, because it was between sessions, was to

work on the digesting of Nevada cases. Russ intended to publish not only the annotations to the statutes, but a digest of Nevada cases. The first job was so-called placing digests that had previously been written under the various topics. I did that and then was made a digester when I had that experience. I worked through the first volume that was assigned to me very quickly. Russ thought, "Either this fellow does a crackerjack job, or he isn't doing the job right."

He assigned a bunch of the digests to one of his former deputies in whom he had great confidence. The fellow said, "Oh, the digests are just *fine*." Russ inquired whether I was really willing to stay.

I said, "Yes."

"Well, then I'm not paying you enough." And he raised the ante on that.

I took the bar in 1964, passed it, and then my first session was 1965.

Now, I want to back up just a little bit.

Certainly.

When you say you were putting these digests in correct order and things—this is pre-computer?

Yes, yes!

What was involved in doing that?

You wrote the digests by hand on slips of paper. You always gave a good condensed summary of the facts before the point of law, and you wrote a separate digest entry for each separate point of law in the case. Yes, you did it all by hand.

And did you have to then do the typing yourself, or were there typists who took care of that?

There were typists. No. [laughter] I am not a handy typist.

What preparation did you have to do for your first legislative session?

Of course, we began drafting bills a couple of months before the session began. People made early requests. Russ would take requests after the election. We simply drafted the bills. There wasn't any special course of training. Now, the whole point of having a legislative counsel in Nevada was to make sure that if a bill was enacted the whole body of the Nevada Revised Statutes (NRS) would be internally coherent and consistent, that is, if what the requestor wanted was to change such and such a provision, the drafter's responsibility was to find out what other provisions might have to be amended—that maybe the requestor had never thought out—in order to maintain consistency and coherence.

There must have been a fair amount of research involved.

There was. Of course, you had to be familiar. But Nevada's body of statute law was then—and to some degree still is—manageable and comprehensible.

Does that mean we're heading away from that?

Yes, we are, simply because the legislators want to legislate too much. When I came out to Nevada, the entire body of Ohio statute law, unannotated, was contained in a volume about four inches thick of ordinary size. The basis of Ohio law—Ohio was not a code state, you see—was the decided cases. Nevada had in similar format five volumes of about equal thickness. Nevada then had a population of, oh, less than 200,000. Less than the county of which I had been chairman of the planning commission. [laughter] Ohio had a population of about ten million. But, you see, we had somewhat followed the California model, but in much less detailed form.

Essentially, Ohio law is based more on case law?

Yes. It too wasn't multiplied. I've seen the Ohio revised statutes since.

They're a bit thicker now?

Yes, they are, which is not an improvement.

I'm sure it's not. Now, at that point you were also in private practice, weren't you?

Yes. The legislative counsel was allowed to maintain a private practice. My original intention was to work for Russ through the first session, because, of course, I owed him something for having taken me in. Then I was going to join a firm in downtown Reno. Russ was also a member of that firm. The other

partners grumbled about how much time the duties of the legislative counsel took. So, at the end of the session, Russ proposed to me that he would withdraw from the firm, and I would not join it. We would run our private practice together in Carson City and run the office.

It sounds like the Legislative Counsel Bureau at that time was almost an ad hoc kind of a thing. In order to have a private practice, were you consulting or moonlighting? How would you describe that?

The duties of the legislative counsel fully performed did not require full and undivided attention. You could do *both*. Of course, during a session, you didn't do anything in that line, but sessions were only about three months long, believe it or not, out of the two-year period.

That goes along with the smaller books, I guess.

It does.

Now, what was the name of the law firm in Reno that you had initially planned on joining?

Breen, McDonald, and Young. This was Fran Breen and Cliff Young.

You were the chief deputy legislative counsel in the 1965, 1967, and 1969 sessions?

Yes.

And then, as well as deputy director of LCB in 1969?

Yes.

How did the work change during those years?

It continued to increase. We would hire on lawyers during the session, and that was never really good, because you had more trouble [laughter] trying to train them, but nobody except me really wanted to go on.

Now, the purpose of the legislative counsel bureau is to make sure that new laws do not conflict with existing laws and to draft laws correctly.

Yes.

Were there pivotal issues or pivotal laws that came out of those sessions in the late 1960s?

For example, Nevada adopted the Uniform Commercial Code. I was the one who finished putting it in shape, that is, not changing the substance of it at all, of course, but putting it in the format to be enacted. The legislature also began to appoint study committees to work during the interim on legislation to be enacted during the next session. So we, of course, staffed those committees. I did most of it.

And so you were basically there to tell them, "No, you can't do this," or "Yes, you can do that."

No, to reason along *with* them how to adapt the substance into the form of the law. In those days a study committee would produce a finished draft of the bill.

Oh, that's changed definitely, hasn't it?

Sounds strange now. We worked through the criminal code, crimes and punishments, and revisions of criminal procedure. We worked through a proposed structure of the Nevada court system, which required constitutional amendment, and which the voters promptly rejected. [laughter]

It sounds like you were doing a lot of revamping.

Yes. The legislature was trying to improve.

Was this a conscious recognition that the population was going to grow?

Yes, in part.

Anything else that brought it about?

I think that probably was the motivating force. Also, I think the legislators realized that while the 1957 revision had made no changes in the law—it had simply enacted it—that, yes, there were things to *do*. We ought to be looking at improving the law.

What kind of working relationship did you have with the legislators and with the lobbyists? Did you have a lot of contact with lobbyists at that time?

A very close working relationship with the legislators. Russ, of course, had the central office. I was what was called the senate bill drafter. Senators were supposed—if they wanted to talk directly to somebody—to come to me. There was an assembly bill drafter at the other end of the hall, literally, in the old capitol. The lobbyists—yes, the good ones worked closely with us, because they would try to get things in, and, of course, we wouldn't take anything from a lobbyist—it had to come from a legislator. That was *their* job, but a good lobbyist can be very helpful.

In what way?

He, if he is a good lobbyist, knows the substance of what is wanted, frequently, much better than the legislator whom he had persuaded to introduce his bill.

And has probably done the background research?

Yes.

I see. And so, a bad lobbyist you would characterize as one who simply has not done his homework?

Yes. Doesn't bother with the substance, just tries to use influence to get things passed. I will give you a little vignette of what a really good lobbyist does. There was a bill pending which related to finance companies. The assembly committee on judiciary wanted someone in the finance company to come in. So the chairman of the committee told me, and I said, "Well, let's see about that."

I called up the late Bill Sanford and told him the situation. He was the lobbyist. He said, "Oh, my!"

The committee had made the request on the morning of day one. I called Bill Sanford late in the morning on that day. About two o'clock on that day I got a call from Los Angeles from a gentleman whose name I have truly forgotten, but he was the president of such and such. "I can't get a flight up there this afternoon. Would tomorrow morning be soon enough?"

I said, "Yes. We will convene at eight o'clock in the morning."

He was there! Sanford *knew*, of course, "Somebody's got to come in." He knew whom to call.

And he got it rolling.

He got it done! All right. That's an illustration of a *good* lobbyist. Bill Sanford, incidentally, was a crackerjack lawyer, also.

What kinds of changes were taking place in Nevada at the time? For example, in 1965 you

did the nuts and bolts of writing up the one man, one vote. Tell me about that.

As Ogden Nash said about “The Purple Cow,” I wrote it. [text of poem included here]

The Purple Cow

I never saw a purple cow
I hope I never see one,
But I can tell you this right now:
I'd rather see than be one.
Ah yes, I wrote “The Purple Cow”
I'm Sorry now I wrote it
But I can tell you Anyhow
I'll Kill you if you Quote it!

But that really, of course, was in response to the U.S. Supreme Court's decision that every state legislator in both houses had to be reapportioned. One man, one vote. Strictly according to population. In my mind that was the beginning of the end of the *good* Nevada legislature, because from the small counties, when you had one senator and one assemblyman from every county, a small county would send a couple of leading citizens, and *they* would remember to go down there for ninety days, roughly, and they would contribute. They would be real leaders.

It really was more of a citizen legislature.

Yes, it was. Then you got the mechanistic one man, one vote. And incidentally, in framing that first legislation, we tried to stay as close as we could to the concept of having people of different interests like ranchers, farmers, miners, and so forth, whose interests were those of certain communities in the state, *still* represented as best we could, and structured the district accordingly. And because, for example, many of the legislators from Clark

County, both senators and assemblymen, live close together in certain neighborhoods, we had what were called floterial districts, several legislators representing a larger population, but they could all live on the same block.

Does that make for a true constituency?

Yes, because, after all, you don't have to live next door to the fellow you represent, as long as you know his general interests. Those were gradually gotten rid of. The district court said that the legislature did change as little as it could to comply with the law. Well, that was what we intended to do.

That was reasonable.

Yes. But it has grown more and more mechanistic ever since, and I leave it to an outside observer to judge the effect of law quality.

Another big issue that came up—this was in 1959—was a law you wrote out that allowed corporate ownership of casinos. What kind of change did that bring?

What it permitted was to bring in a much wider base of capital to finance the expansion. That is what they wanted. I made it clear to them that many people, I guess, in Nevada, even in relatively high office, still never really had it through their heads, that when you have an individual or a partnership licensed, you can call that individual or every member of that partnership up before the Gaming Control Board or the Gaming Commission to be interviewed for a license. Once you have a corporation, yes, you've got the officers, directors, but you don't *know* who owns that stock and has the beneficial interest, because

stock can be held in a street name, the name of a broker.

Right. Do you think that led to less control?

Of course it did! I don't know that. I have no knowledge of any particular instance in which that aspect of it led to control by undesirable interests, but....

But it certainly made them harder to find.

Yes, it certainly did. In an informal session in Paul Laxalt's office—I remember this—we had representatives of some of the larger casinos that wanted to go in for this. I said, "Actually, the only safe way to license a corporation would be that the corporation was to be licensed upon such conditions as the Gaming Commission establishes in each instance and may change as the situation requires."

Howard Hughes's representative said, "We'll take that!"

All the others, "Oh, woo, woo, woo, that's impossible!"

I said to the governor and the legislative representatives, "Well, that's the only way you can have anything even close to the degree of control you have now." So this was made voluntarily.

Looking back, who came up with that law? Who wanted to open up the ownership of casinos?

I can't really say, individually, but as the Las Vegas casinos, in particular, wanted to enlarge, they needed more capital than any individual or small group had under its control.

Do you think they actually had a legitimate goal there?

Yes, they did, and it has certainly served its purpose. You have those huge establishments now, some of them in Reno, too, in contrast to individuals like Warren Nelson, who just died—I knew him well. Bill Harrah—he was a little before my time—and others who had actually started their casinos.

It's the off-season now, but I'm assuming you had a rhythm during the year?

You did.

It calmed down somewhat. You were still busy, and then it was crazy during the session.

Yes. Now, the rhythm, of course, was biennial. We have a biennial session. We used to have special sessions until we devised the interim finance committee, and that greatly reduced the number of even year sessions. There have been a few, but it reduced the need for them.

So, work would go on. What kind of work would you do in between sessions?

Of course, the first thing that had to be done after the session was over was to marshal all those laws together and publish the supplement to the NRS with them in it. That, of course, took some while. Then you had the study committees during the interim, which were beginning to find some of the more important legislation for the next session. Well before the next session convened, you would begin to get requests from senators whose terms carried over that were finished from the study committees, and you'd begin drafting. So it was true that during the summers there was a little time you could take off.

Actually breathe.

Yes.

Did you meet with any kinds of opposition or obstacles to the work that you were doing?

There are *always* obstacles. There are always some individual legislators, some outside groups, who don't want to be constrained by the process to write sensible law. There will be people who want to blather about things that are merely desirable. A law, a statute, should either command or prohibit or declare the law. It has no other legitimate office. You don't declare what its purpose is. You declare what is allowed, what is forbidden.

That's very basic, very simple. Could you describe the most frustrating aspect of your job, then?

The most frustrating aspect of the job was to keep competent bill drafters, that is, people with patience and intelligence to learn the language in which a statute must be written.

So there's a fairly specialized language that has to be used?

There's a rather specialized language. The drafter must also have the intelligence and the willingness to do the hard work of looking up things, making *sure* things are in the right place, and that you have found and amended anything contradictory. That requires considerable intellectual ability.

Right. And I guess in today's terms, "loopholes" is what you're talking about.

Yes.

How about the most satisfying aspect of the job?

Seeing, I suppose, that you were able to produce a law that met the desire of the legislature and kept that body of laws consistent and coherent. That was the satisfaction of it.

After the 1969 session, you returned to Ohio and private practice, right?

Yes, I did.

What brought about that change?

I was married at that time to my wife Virginia. That was an endearing marriage. We were married in 1965, shortly after I came out here. She was an Ohio girl, and we were married throughout her lifetime. She died in 1982, unfortunately for all of us. Her parents, of course, lived in Ohio. They were getting quite up in years, and Virginia thought we needed to be back there to look after them. My parents had long since passed away, but Virginia was a little younger than I was, and her parents were still alive. That was the reason for going back. And then, of course, being back there, I took hold of the farm again and blithely undertook to finish the job of clearing it and making it a good operating farm. Just about the time I was finishing getting the fences rebuilt, along came what was then the Cleveland Electric Illuminating Company. I knew them well from my days on the planning commission. They were the utility. They had to build an atomic power plant. They had accumulated about a thousand acres in the northwestern corner of Perry Township. That we knew. That was fine. But then their engineers had informed them that the only suitable site for

the plant was the very eastern most part of that whole area. They had to have my farm for a buffer.

How did you feel about that?

Of course, we negotiated. I cried all the way to the bank. It was taken under threat of condemnation, so that I could take the proceeds and re-invest them in land, without having to pay capital gain, which would otherwise have been enormous.

Now, how many generations had that been in your family?

Actually, only two. My father had bought it. It was *not* the original family settlement, by any means. But between the time my father bought it and the time when I completed selling off the last of it—because the illuminating company didn't take all of it—it was a century.

Of course, I had to do that, and that, of course, kind of took the heart out of being back there. I came out only briefly during the 1971 session to explain the evidence code, which was the last bit of those studies. Then, in 1973, the director of the counsel bureau persuaded me to come out and help Clint Wooster, who was the legislative counsel. Then I came out again in 1975. But, at the end of that session, Jim Gibson, for whom I had great respect, corralled me, "Frank, you're going to *have* to come back out here."

By that time, both of my wife's parents had died, so, although she would, I'm sure, have preferred to live back there, we did not have to. I talked to her, and she consented to come back. I was appointed legislative counsel as of July 1, 1975, came out and got the office going, but I actually stayed in Ohio, because my son Frank was going to Phillips Exeter Academy.

He was a ringer—he went there only during the last year—one of the few ringers who ever finished among the top of his class, but he did; a very intelligent boy. We let that finish before we came out here again. That was the explanation of the various timing.

Now, that same year, you seemed to have realized that you were settling into your life's work. That same year you became a member of the National Conference of Commissioners of Uniform State Laws.

Yes, that was *ex officio* as legislative counsel. Russ had never bothered with it. He never bothered to attend the meetings or anything like that, but I decided, "Well, I better go and see what this is," and was in ever since very enthusiastically.

Tell me about the organization. What's its purpose, and how does it function?

Its purpose is to draft laws on such subjects as is suitable for this treatment, which can be adopted in all of the fifty states. The Uniform Commercial code is, of course, the classic product, but there are others.

So it almost provides a framework to individual state legislative counsels. It probably saves them a tremendous amount of time.

It does, to the extent that our work is well done, and notice, of course, the qualification I put on that. We try, but work is necessarily uneven in its ultimate quality. But yes, it does give a framework from which state laws can be fashioned. They can either adopt the uniform act, or they can modify it to local conditions, and still they have a product that has been worked on from a variety of points of view.

But the idea, then, is that, for example, the Uniform Commercial Code will not vary from state to state.

Yes. You can see in the commercial code where that is very desirable because in this country most business operates on a national, not a local, basis.

How much influence do the commissioners have on the actual wording, then, of state laws?

Of course, they don't have a *direct* influence on what is adopted in the states. The commissioners from each state try to persuade their legislature to consider and to enact and to keep it, at least substantively, in the uniform track. There is considerable differentiation of language. We follow it rather closely, but, for example, all this modern political correctness—if you don't use “she” and so forth—we do not accept in this state. The conference did, and so to a degree, at least when I was formulating them for enactment, I would re-institute what it was *supposed* to say.

Now, is there ever a concern in the individual states that this National Conference of Commissioners for Uniform State Laws might almost be a back door to more federalism?

No, because it's precisely the opposite. We offer the states the opportunity to act effectively and uniformly and thus deprive Congress of the excuse that this really ought to be uniform. Congress enacts much unconstitutional legislation. Well, I think anyone who really studies the Constitution and compares it to legislation enacted would say, “Where did they get the authority to do that?” They don't have it, but they enact it anyway. We are a counterweight, rather than

a handmaiden, as it were, of congressional influence.

And then, isn't there also a mission to educate the public?

Yes, there is.

Tell me a little bit about that.

Of course, we don't try to educate the public directly. We try to educate the legislators. Of course, to a degree, as individual members of the conference are influential in their local communities, they build a fire under the legislators, as it were, by getting the chairman of the board of the principal corporation in his district interested in this particular thing. [laughter] Let *him* pick up the telephone and say, “Tom, you better get that on the books!”

Now, when you came back out in 1975, after being gone for about six years, what kind of changes did you see in Nevada itself in the legislature?

I saw a continuation of the trends that I had seen: the influence shifting to the south because of the large population and the mechanistic apportionment, the tendency of the population being concentrated in the urban centers. These were all continuations of trends that had been going before. Nothing was noticeably *new*.

Now, as time went on, did the workload increase proportionately with staff increases, or did you find that the workload increased faster than the staff did?

The workload tended to increase in proportion to population. We tried to keep up with it from the standpoint of staffing,

and that required more and more delegation of drafting work, and even delegation of reviewing. That, inescapably, no matter how good the people are, tends to mean a certain diminution in the uniformity of the product.

Was any of that slack picked up by the National Conference of Commissioners in providing almost frameworks? Did they help to take up some of that staffing slack?

I would say no, because the staffing growth, as I have explained, is due to Nevada's exploding population. There are other states with exploding population, which really, I have to say, make no effort to have their laws concise or clear.

Is there a legislative culture within which you have to work?

I wouldn't say, really, not in this state, anyway.

How hard is it to remain apolitical when you're working within such a polarized atmosphere?

If—and my deputies and I were always able to maintain this—the legislators believe that you are non-political they will respect that, and both sides of an argument would come into my office and explain and be advised, knowing that nothing of what they said would be told to the other.

So they both had to trust you to be extremely discreet.

Yes. And, if I may, I will tell you an anecdote to illustrate the superiority of a single staff over what many states have, which is partisan staffs, staffs for the separate houses, and so on. I think this was about 1976 or 1977,

close in there, and I forget the particular topic, but it was going to be new. It was relatively new, and Nevada was going to have to act on it. I thought, "I wonder what New York did about this?"

I went and looked in the New York laws. There was a statute on it all right, about so long. And at the bottom of it was, "As enacted by," I'll use Nevada terminology, "Assembly Bill so and so." Then, following, there was another one, same length, slightly different, "As enacted by Senate Bill so and so." Then a third and a fourth. I called up the gentleman whom I knew was head, such as it was, of New York's drafting agency and asked him, "What happened?"

One bill was drafted for one party in one house. And, you see, you had two parties in two houses. So four bills were enacted. He had no authority and no means of observing that process or correcting it or telling anybody to correct it. That happened to be a classic example. It wasn't usually that bad. I said, "Well, which one of them is the law? You tell me they're all law?" The publisher—they don't publish their own statute—has to put them all in. The courts will sort it out, eventually. That is a classic of the *other* way to go. I think ours is better.

It certainly sounds like it.

Difficult as it may be sometimes.

Now, I have to ask this. What is a "Daykinism?"

Oh, boy. A Daykinism is a kind of language, which is correct English, rather than common speech, and something which occurs often enough in different bills that it is recognized.

Can you give me some examples of Daykinisms?

I really couldn't, but people will say, "That's a Daykinism." Yes. [laughter]

I've heard a lot about shall's and should's.

Yes. All right. Now, "shall" is a command. "Is" declares the law. The state treasurer *shall* pay a warrant issued by the controller. A will *is* valid if it is signed by the testator and witnessed by two witnesses.

Didn't you at one point spend a considerable amount of time going back and tightening up?

Yes, we did, because there's a temptation among legislatures, especially years ago, to enact, "A will *shall* be valid if..." All right, that's *is*. It's a matter of law. The will doesn't have a duty to be valid under those circumstances. Nor is there any command to anybody that it's valid. It simply *is* valid, as a matter of law. And in the original revision it was enough of a task to reconcile the substance of the statutes. None of those things were changed, but as Russ drafted, and as I drafted, and so on, whenever the opportunity presented itself, whenever a section was before us for a substantive purpose, we would go through and correct the language and style.

I see. Hence, the term "Daykinism." [laughter]

Yes.

Going back to the time that you were head of the legislative counsel bureau, how have the issues changed from, say, the late 1960s to the 1980s?

My impression is that—and I'm trying to put this back in context—between the late 1960s and the early 1980s we had gone from the best we could do toward a rational apportionment of the legislature,

notwithstanding the one-man-one-vote requirement, to a *rigidly* mathematical apportionment. Every district was supposed to have as nearly as possible the same population, regardless of whether the constituents of that district really constituted any sort of unified whole or interest. From that, of course, stemmed many consequences.

And a few conflicts?

Yes, I'm sure they did.

Were you consulted in this reapportionment?

No, I was not. I drew, of course, the reapportionment in 1965. We tried to preserve a greater representation in proportion to population in the rural areas and tried to align districts with normal representation. When strict arithmetic took over, you had monstrosities such as the district of my old friend, Senator Jacobsen, being close to home, whose district began way down in Douglas County and extended north through a swatch of Carson City, into Washoe County north of Steamboat. I ran into him campaigning up there. [laughter] "Good heavens, what are you doing up here, Jake?"

"Well, it's in my district."

No, I was not consulted in any way. The research division did the things using the census maps and going down to census blocks—I think that was the smallest division they did—to construct the districts. They were influenced, I am sure, though I have no personal knowledge of any such instance, by legislators as to which particular blocks, so that they still lived in their districts, or something like *that*, but, other than that, purely mechanical.

Now, how about some of the issues? In 1969 Nevada was still a fairly small state,

population-wise, and in many respects still a rural state. After the 1970s that really changed.

That is true. I would not say that even in the 1960s it was a rural state, because we never did have in Nevada a rural economy. We had—we still have—a mining economy. What has happened is that the mining economy takes many fewer men to produce a ton of ore than it did.

As Nevada grew, for example, the amazing growth in the late 1970s, did you see different kinds of bills going through the legislature?

Yes. That is true. In the first place, of course, strictly urban legislators, who had no concept of what went on in the rest of the state, would ask for things. There was also more of a tendency toward welfare bills and more of that sort of stuff. Nevada is still, fortunately, not overboard on this.

How did the legislature itself change? Did you see a shift in the players?

Yes. Gradually, some of the older legislators died off, and many of the most experienced were gradually districted out. I would make this comment. When we had long, long ago one senator and one assemblyman from every county, the people of a small county would elect maybe a widely-respected farmer, maybe a widely-known, respected businessman, send them up to a relatively short session, and that wisdom and ability was of benefit to the state as a whole. When you had to elect senators and assemblymen from mechanically-drawn districts, it is quite possible to have—and I choose not to name names or suggest areas—districts in which, quite frankly, in my opinion, no resident is really qualified to sit

as a legislator, not through any fault of theirs, but through the kind of people that they are.

Do you think with the longer sessions and the additional requirements that we're moving towards almost a professional legislative body as opposed to citizen legislators?

I profoundly hope not. I don't think we have yet. Of course, we have a nominal limit on the length of sessions. Well, we're not close to it yet. That would be a disaster.

To have professional legislators?

Yes. Particularly, chosen, as they would have to be. I've made a legal profession of it, but serving as a legislator should not be someone's focus in life. In a representative republic we are not *supposed* to have *professional* rulers. We are supposed to choose from among ourselves people who would get together, represent us, and go *home*.

Going home—that's the tough part. [laughter]

Yes.

In general, who would you say are some of the most powerful players in a legislative setting—the types of people? Would it be, for example, a governor, a long-term legislator, a lobbyist? Who tends to carry the most weight?

Governors would like to. They sometimes do and sometimes don't, depending in part on others' estimate Frank of their relative abilities. Long-term legislators—certainly so. They came to chairmanships of the key committees and general influence over their colleagues. Lobbyists in Nevada formerly were not overridingly influential. I think with

the gradual degradation of the legislature that the power of money has come to play a greater role. But since I have been out of the thing for a while that that *may* be a jaundiced observation, but I fear it is not.

During the time that you were down at the legislature, who are some of the individuals who stand out?

All right. Jim Gibson, Carl Dodge. Well, Lawrence Jacobsen, for example, who is no longer serving, he of the enormously lengthened district. Bill Swackhamer, who sat in it. Oh, Norman Glaser and Dean Rhoads, who has followed Norman. Elko County has sent pretty good people, generally, and they manage to hang onto enough population to send representatives of the sort. Any enumeration, without thinking about it longer than this, is bound to be unfair, but those are probably the outstanding men that I recall.

Did you have opportunity to work fairly closely with some of them?

Yes, I did.

What kinds of bills did they bring to you?

By and large, the ones I have named brought in bills that they in their intelligence considered to be in the interest of the state. They did not bring in self-interested bills or bills aimed at a group. I did not name Joe Neal as one of the outstanding legislators. He certainly was a long-term legislator. And Joe was more honest than I would really have attributed to the district that he represented, but *he* tended to lean a little more. Maybe he thought there's nobody *else* to do it. And of

course corresponding assemblyman, Don Mello, I guess, I should have mentioned, too, who jinxed the long-term assembly. He was chairman of what I used to call "ways to be mean." [laughter] He managed to accomplish it. He tried to rein things in.

What kind of administrative issues did you yourself face, particularly as technology was changing during this period of time?

Well, two, of which we tried to let the second partly offset the first; I had to keep on adding staff, because the number of bill requests kept increasing.

Exponentially.

Yes, nearly. Technically, before I had gone back to Ohio there had been little change. When I came back in 1975 we were just beginning to *try* to computerize the legislature. Art Palmer was then the director of the Legislative Counsel Bureau, and he and I tried to work together closely—and it took several stumbles along the way—to computerize the legislature. However, the first session that we used the computers, Nevada was—I believe I'm correct in this, because I have heard no exceptions to it—the *only* legislature in the country that did not have to call a special session afterward to repair damage in legislation caused by the computers. And there was a reason for that. Throughout the session I kept the old Mag Card typewriters on standby, so whenever the computer broke down we simply drafted the legislation on Mag Cards. That was 1977.

What kind of response did you get from the legislators themselves when you first introduced computerization?

Oh, they were gung-ho for it. It was supposed to be the wave of the future and so forth. I think, however, a lot of ours were realistic. They knew it was going to *take* a while. They bore with me, bore with the gradual transformations. As far as I was concerned, they were always generous in supporting financially and psychologically what we had to do.

Do you consider yourself sort of a political creature? Do you really enjoy the interplay of politics, or were you happy to leave the politics at the end of the day?

The latter. I conscientiously, of course, as my duty was, refrained from any political involvement. I do not believe when I retired from the legislature that any member of the legislature knew for what party I customarily voted. They may have been slightly surprised when, after retiring from the legislature in January of 1986, I showed up in March of that year as a member of the Carson City Republican Central Committee, but that's simply because my precinct meeting had been trying to get me to sit on it for years and years. At last, I could accept.

What do you think were your major contributions to the Nevada legislature?

One of them—speedily erased—was to attempt rationality in the reapportionment. Others I think were to move us into the computer age without destroying the process. Another was—and I hope this is not gradually erased—to follow Russ's lead in trying always to improve the language of the statutes. Whenever we had to amend something, do the substantive thing, we had to improve, polish up the language a little bit as we went along. Those three, I think, were my principal contributions.

How much of a jump was it for you to go from the Legislative Counsel Bureau back to private practice?

Well, not difficult. I had in Ohio private practiced for some fifteen years before I came to the legislature. While Russ was legislative counsel we were allowed private practice. He and I did it. When I came back I agreed that I would not engage in private practice nor permit any of my deputies or employees to do so, but that was only therefore a relatively short, maybe a ten-year gap, and then I went right back in.

What made you decide to focus on business, probate, and tax law?

Primarily, the fact that I never liked personal injury law or criminal law. I never had but the one criminal case, and that was assigned to me as a young lawyer when I first began in Ohio. Oh, it was a matter of taste. Those were my interests. Those were the things I was interested in outside the law.

Did you find that your work at LCB gave you a different outlook, perhaps, in these areas of practice, or more insight?

It gave me, perhaps, more tendency to look at the statutes first in approaching any matter. Now, in Ohio that was not important. The whole statutes in Ohio, unannotated, were contained in one bound book about four inches thick. And therefore, yes, that was the Ohio General Code.

The annotated thing is longer, of course, but out here, of course, with the influence of the California basic codes, their statutes would take twenty feet of shelf space, where ours take about four. Anyway, it was more important, and because I had worked with

the statutes all along, my first thought was, “Let’s see if there’s a controlling statute. Then, if not, we look at case law.”

Did you then, as you were working at LCB, ever make an attempt to contain the proliferation of law?

Well, I would have dearly loved to do so, but I had to draft every new bill that was requested. Nobody ever asked me whether we could do without a law.

What kind of an impact does a legal career have on a family? I’m assuming you spent some very long hours during legislative sessions.

I did. And my wife Virginia, who was my wife during most of my time in that career, was very supportive of it. Yes, it is hard, but, of course, in the earlier years, the sessions were mercifully brief.

Is there anything I’ve missed that you would like to have included?

I look back on my life’s work as a whole, but, of course, a lot of the focus of my life, throughout my life, has been outside the law. I’ve always had scholarly interests. I never got wrapped up in the law so much that it was the only interest that I really had. We could do other things. I still like to read.

That concludes our interview. Thank you.

All right. Thank *you* very much.